

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

OGC 77-3621
6-6-77

June 3, 1977

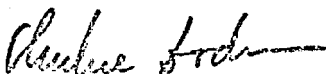
MEMORANDUM FOR

The Secretary of State
The Secretary of Defense
The Attorney General
The Director, Office of Management and Budget
The Chairman, Joint Chiefs of Staff
The Director of Central Intelligence
The Administrator, Energy Research and
Development Administration
The U. S. Representative to the United Nations
The Archivist of the United States
The Counsel to the President

SUBJECT: Comprehensive Review of the Classification System

There will be a meeting of the ad hoc committee created by PRM 29 at 2:30 p.m., Wednesday, June 8 in Room 305 OEOB to begin work on the new Executive Order called for in the PRM.

The meeting will be co-chaired by Dr. Robert Gates of the NSC Staff and Mr. Richard Neustadt of the Domestic Council Staff. An issues paper prepared at the Department of State is attached for your information. Will you please notify my office by noon on Tuesday, June 7 of your representative(s) who will attend this meeting.


Christine Dodson
Staff Secretary

Attachment

MORI/CDF



DEPARTMENT OF STATE

Washington, D.C. 20520

Issues to be Considered by ad hoc Committee
Under PRM/NSC

The following key issues shall be considered by the ad hoc Committee. Their guidance on these issues shall serve as the basis for the working group's drafting efforts. These issues are grouped under the appropriate point from the PRM.

1. Which information requires protection and for how long and what criteria should be used in making this judgment;

- what is "sensitive national security information"? Is the standard of E.O. 11652, i.e. "could reasonably be expected to cause damage to the national security" an adequate legal standard?
- Are the existing categories of E.O. 11652 (i.e. Top Secret, Secret, Confidential) meaningful? Should we re-define the categories, perhaps reducing them to two or increasing them to four?
- Should the new Executive Order establish special categories for information protected by statute, i.e. the DCI's responsibility for protection of intelligence sources and methods, and NSA's responsibilities for communications intelligence:

2. How to provide for the maximum release of information to the American public on government activities and policies consistent with the need to protect sensitive national security information; and

3. How to promote increased public access to this information through a more rapid and systematic declassification program;

- Can the automatic declassification system be modified or expanded to accelerate declassification or to reduce the amount of information that is exempted from automatic declassification? Are the periods for automatic declassification established by E.O. 11652 too long (i.e. 10 years for TS, 8 for S, 6 for C)?

- 2 -

- What can be done to increase the use of the automatic declassification system, or to use "specific event declassification," e.g. conclusion of a certain negotiation.
 - Should more emphasis be placed on the Foreign Relations Series, or other Departmental publications, or on programs by the Archives to publish important papers?
4. Which categories of classified material more than 20 years old could be declassified in bulk under appropriate guidelines;
- Should the new Executive Order state which categories could be declassified in bulk after 20 years; or should the order state that everything must be declassified after 20 years except certain specific categories?
 - If the former approach is selected, can the categories be adequately defined or should that be left to the Archivist to work out with the head of the Department or agency at the time of accession?
5. Whether the Departments and Agencies should prepare classification and declassification guidelines for their employees;
- Should the new Executive Order require departmental guidelines, or should they be optional? Will they encourage more or less classification?
6. Overlaps between the new Executive Order and the Freedom of Information Act as amended and the Privacy Act;
- Should the new Executive Order direct that all requests from a member of the public for classified information be treated as a request under the FOIA? (i.e. discard the separate mandatory review provisions of E.O. 11652?)

- 3 -

7. How the classification system can be simplified to make it more understandable and easier to implement;

- Should the new Executive Order be very short (so people will read it) with details in an annex or an NSC directive? (e.g. instead of lengthy sections on authority to classify and declassify, the order could simply say persons with authority to classify or declassify at a certain level will be designated in writing by the head of the Department or agency in accordance with the provisions of the annex).
- Could the automatic downgrading by step be eliminated? (Is it meaningful to say that Top Secret automatically goes to Secret after two years?)

8. How unnecessary and duplicative practices and procedures can be eliminated, reducing expenses;

- Should the order permit or prohibit additional protections such as the practice of "special clearances" or "compartmentalization"?
- Should the order require standardization of certain administrative matters such as cover sheets, forms, and accountability?

9. What kinds of disciplinary actions can be taken to prevent the misuse of the security classification system by government officials.

- Is the sanction in E.O. 11652 ("repeated abuse... shall be grounds for administrative reprimand") stiff enough? Should there be criminal sanctions for extreme misuses, such as use of classification to cover up criminal activities or gross mismanagement?
- Should the new Executive Order adopt an enforcement system based primarily on Departmental action? (One suggestion is the following: routine inspections of classification and declassification decisions, incorrect or poor decisions discovered in the inspections reported to individual's superior, head of the Department receives a yearly report of such reports and must certify to President or NSC that appropriate corrective steps have been taken).

- 4 -

10. Implementation and role of Interagency Classification Review Committee.

- Should the responsibilities and composition of the ICRC as established under E.O. 11652 be continued?
- If changes are appropriate, should the body
 - be given greater authority to enforce the order?
 - have responsibility for coordinating the executive branch policy on classification in response to FOIA requests and lawsuits?
 - be a body to which the public has a mandatory right of appeal (one would have to appeal to ICRC before going to court under FOIA)?
 - be chaired by the Vice President or prominent private citizen?

11. Other issues not mentioned in PRM;

- Should the new Executive Order require that each person who has access to classified information execute a standard secrecy agreement as a condition of being granted access?
- Should the new order establish procedures and standards for providing U.S. classified information to foreign governments?
- Should the ad hoc Committee consider the issue of what sanctions (civil or criminal) should be adopted, modified, or continued, for the unauthorized disclosure of classified information?